

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
)	
Plaintiff,)	
)	
v.)	
)	CIVIL ACTION NO.
)	
DOMINICK'S FINER FOODS, L.L.C.)	
)	
Defendant.)	
)	
_____)	

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (EPA), files this Complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to the Clean Air Act, (the Act), 42 U.S.C. § 7401 et seq., against Defendant, Dominick's Finer Foods, L.L.C. (Dominick's or Defendant), for civil penalties and injunctive relief for violations of the commercial refrigerant repair, testing, recordkeeping, and reporting regulations at 40 C.F.R. Part 82, Subpart F, §§ 82.152 - 82.166, (Recycling and Emission Reduction), promulgated pursuant to Subchapter VI of the Act (Stratospheric Ozone Protection), 42 U.S.C. §§ 7671 - 7671q.

2. This action concerns Dominick's facilities located at: (1) 290 Hawthorn Village

Commons, Vernon Hills, IL; (2) 3645 N. Central Ave., Chicago, IL; (3) 8700 S. Cicero Ave., Oak Lawn, IL; (4) 1020 Waukegan Rd., Glenview, IL; (5) 1145 - 55 Mt. Prospect Plaza, Mt. Prospect, IL; (6) 3012 N. Broadway Ave., Chicago, IL; (7) 17W675 Roosevelt Rd., Oakbrook Terrace, IL; (8) 5233 N. Lincoln Ave., Chicago, IL; (9) 325 Palatine Rd., Arlington Heights, IL; (10) 525 Chicago Ave., Evanston, IL; (11) 6312 N. Nagle Ave., Chicago, IL; (12) 8900 Greenwood Ave., Niles, IL; (13) 1935 N. Neltnor (Rt. 64 & Rt. 59), West Chicago, IL; (14) 450 Half Day Rd., Buffalo Grove, IL; (15) 1293 E. Higgins Rd., Schaumburg, IL; (16) 1919 Skokie Valley Rd., Highland Park, IL; (17) 1241 Rand Rd., Prospect Hts., IL; (18) 13180 S. Cicero Ave., Oak Lawn, IL; (19) 8250 W. 87th Str., Chicago, IL; (20) 250 S. Randall Rd., Elgin, IL; (21) 15080 S. LaGrange Rd., Orland Park, IL; (22) 7501 W. North Ave., River Forest, IL; (23) 7401 W. 25th Str., North Riverside, IL; (24) 7241 Lemont Rd., Downers Grove, IL; (25) 3454 E. 118th Str., Chicago, IL; (26) 4014 W. Lawrence, Chicago, IL; (27) 144 S. Gary Ave., Bloomingdale, IL; (28) 5235 N. Sheridan Rd., Chicago, IL; and (29) 3300 W. Belmont, Chicago, IL (collectively the 29-Facilities) .

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b) and 28 U.S.C. §§ 1331, 1345, 1355.

4. Venue is proper in the Northern District of Illinois, pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and 1395(a) because it is the judicial district in which Defendant's principal place of business is located.

NOTICE AND AUTHORITY

5. The United States Department of Justice has authority to bring this action on behalf of

the Administrator of the EPA pursuant to 28 U.S.C. §§ 516, and 519, and Section 305(a) of the Act, 42 U.S.C. § 7605(a).

6. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), the United States has notified the State of Illinois (in which all of the 29-Facilities are located) that the United States is commencing this action against Dominick's.

DEFENDANT

7. Dominick's is a corporation incorporated under the laws of the State of Delaware. Dominick's is a retail grocery chain that uses commercial refrigeration units for chilling its food display cases.

8. Defendant is a "person," as that term is defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e) and 40 C.F.R. § 82.152, and within the meaning ascribed under Section 113 of the Act, 42 U.S.C. § 7413.

DEFINITIONS

9. As defined by 40 C.F.R. § 82.152, the phrase "commercial refrigeration" means, for the purposes of 40 C.F.R. § 82.156(i)(1), the refrigeration appliances utilized in the retail food and cold storage warehouse sectors, including, refrigeration equipment found in supermarkets and convenience stores.

10. An "appliance" includes any device which contains and uses a class I or class II substance as a refrigerant used for commercial purposes, including any refrigerator, chiller or freezer. 40 C.F.R. § 82.152.

STATUTORY AND REGULATORY PROVISIONS

11. Subchapter VI of the Act, 42 U.S.C. §§ 7671-7671q, implements the Montreal

Protocol on Substances that Deplete the Ozone Layer, and mandates the elimination or control of emissions of substances known to or suspected of destroying the stratospheric ozone layer, known as class I and class II ozone-depleting substances.

12. Section 608 of Subchapter VI, 42 U.S.C. § 7671g (National Recycling and Emission Reduction Program) requires EPA to promulgate regulations establishing standards and requirements regarding the use and disposal of regulated refrigerants, known as class I and class II ozone-depleting substances, during the servicing, repair, or disposal of appliances used for commercial refrigeration. Such regulations are to reduce the use and emission of known or suspected ozone-depleting substances to their “lowest achievable level” and “maximize the recapture and recycling of such substances.” Section 608(a) of the Act, 42 U.S.C. § 7671g(a).

13. EPA promulgated the regulations required by Section 608 of the Act, codified at 40 C.F.R. Part 82, Subpart F, §§ 82.150- 82.166, (Subpart F Regulations), on May 14, 1993 (58 Fed. Reg. 28,712).

14. The Subpart F Regulations include leak repair requirements with regard to, inter alia, “commercial refrigeration” equipment containing greater than fifty (50) pounds of refrigerant. 40 C.F.R. § 82.156(i).

15. Subchapter VI of the Act prohibits any person “maintaining, servicing, repairing, or disposing of an appliance . . . , to knowingly vent or otherwise release or dispose of any such class I or class II substances used as a refrigerant in such appliance in a manner which permits such substance to enter the environment.” 42 U.S.C. § 7671g(c)(1). The Subpart F Regulations reiterate this prohibition. 40 C.F.R. § 82.154(a).

16. The Subpart F Regulations at 40 C.F.R. § 82.156 prohibit leaks of ozone-depleting

substances from commercial refrigeration equipment having a charge of 50 or more pounds, and require that leaks at excessive rates be timely repaired, or the equipment be retrofitted or replaced.

17. The maximum allowable leak rate of ozone-depleting substances from commercial refrigeration equipment having a charge of 50 or more pounds, on an annualized basis, is 35%. 40 C.F.R. § 82.156.

18. If commercial refrigeration equipment is leaking ozone-depleting substances at an annualized rate greater than 35%, the owner/operator of such equipment must repair the leak, bringing the annualized leak rate below 35%, within thirty days after the owner/operator discovered, or should have known of, the leak. 40 C.F.R. §§ 82.156(i)(1) and (i)(9).

19. The Subpart F Regulations provide an exception to the requirement that the leaking equipment be repaired within 30 days. Leaks do not need to be repaired if, within 30 days after discovering the leak, the owner/operator develops a written, detailed plan to retire the equipment and replace it with equipment that uses non-ozone depleting substances or a less ozone-depleting substance or to retrofit the existing equipment within one year. 40 C.F.R. § 82.156(i)(6). The plan must be dated, and all work under the plan must be completed within one year except as otherwise provided by the Subpart F Regulations.

20. The Subpart F regulations establish recordkeeping requirements. The owner/operator of appliances containing 50 or more pounds of refrigerant must maintain, inter alia, records documenting the date and type of service, as well as the amount of refrigerant added to the equipment. 40 C.F.R. § 82.166(k).

21. Pursuant to 40 C.F.R. § 82.166(n), the owner/operator of commercial refrigeration

equipment must maintain information on-site and must report to the EPA, inter alia, the leak rate of any equipment, the method used to determine the leak rate, the date a leak rate greater than the allowable leak rate was discovered, the location and extent of leaks, and the date and type of repair work that has been completed.

22. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the United States to commence a civil action for a permanent or temporary injunction, and to assess civil penalties up to \$25,000 per day for each violation of Section 608 of the Act, 42 U.S.C. § 7671g, prior to January 30, 1997, and for civil penalties up to \$27,500 per day for each violation occurring on and after that date pursuant to Pub. L. 104-134 and 40 C.F.R. § 82.156.

GENERAL ALLEGATIONS COMMON TO ALL FACILITIES

23. At all times relevant to this Complaint, Dominick's has been the "owner or operator" of one or more commercial refrigeration systems at each of the 29-Facilities normally containing more than 50 or more pounds of R-22, R-12, or R-502, which are regulated "class I" or "class II" substances within the meaning of Section 602(b) of the Act, 42 U.S.C. § 7671a(b), 40 C.F.R. Part 82, Subpart A, Appendix B, 40 C.F.R. § 82.154(a), and 40 C.F.R. Part 82, Subpart F, Appendix B.

24. The commercial refrigeration systems at each of the 29-Facilities constitute "commercial refrigeration equipment" as described in 40 C.F.R. §§ 82.152 and 82.156, and are "appliances" within the meaning of 42 U.S.C. § 7671(1) and 40 C.F.R. § 82.152(a).

FIRST CLAIM FOR RELIEF

(VIOLATIONS OF SECTION 608 OF THE ACT AND 40 C.F.R. § 82.156(i)(1))

25. Paragraphs 1 through 24 are realleged and incorporated herein by reference.

26. Upon information and belief, the annualized leak rates of class I and class II substances from one or more commercial refrigeration systems at some or all of the 29-Facilities exceeded 35 percent on one or more occasions, and Dominick's failed within 30 days to repair the leak or develop a one-year plan for retrofit or retire of one or more of such leaking appliances, in violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(1).

27. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(1), at each such leaking commercial refrigeration system at the 29-Facilities, Dominick's is liable for civil penalties of not more \$27,500 per day, per violation.

28. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief should be entered requiring, among other things, that Dominick's retrofit or retire each such leaking commercial refrigeration system at the 29-Facilities .

SECOND CLAIM FOR RELIEF
(VIOLATIONS OF SECTION 608 OF THE ACT AND 40 C.F.R. § 82.156(i)(6))

29. Paragraphs 1 through 24 and 26 are realleged and incorporated herein by reference.

30. Upon information and belief, Dominick's failed to develop a written, one-year retrofit or retirement plan for leaking commercial process refrigeration systems as required by Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(6) with respect to one or more leaking commercial process refrigeration systems at some or all of the 29-Facilities.

31. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(6), at each commercial refrigeration system at the 29-Facilities, Dominick's is liable for civil penalties of not more than \$27,500 per day, per violation.

32. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief should be entered requiring, among other things, that Dominick's retrofit or retire each such leaking commercial refrigeration system at the 29-Facilities.

THIRD CLAIM FOR RELIEF
(VIOLATIONS OF SECTION 608 OF THE ACT AND 40 C.F.R. § 82.156(i)(3)(ii))

33. Paragraphs 1 through 24, 26 and 30 are realleged and incorporated herein by reference.

34. Upon information and belief, Dominick's failed to complete the retrofit or replacement of leaking commercial refrigeration equipment, or otherwise comply with Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(6), within one year of determining that repairs to the commercial refrigeration equipment were not successfully completed with respect to one or more commercial refrigeration systems at each of the 29-Facilities.

35. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(6), at each such leaking commercial refrigeration system at the 29-Facilities, Dominick's is liable for civil penalties of not more than \$27,500 per day, per violation.

36. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief should be entered requiring, among other things, that Dominick's retrofit or retire each such leaking commercial refrigeration system at the 29-Facilities.

FOURTH CLAIM FOR RELIEF
(VIOLATIONS OF SECTION 608 OF THE ACT AND 40 C.F.R. § 82.166)

37. Paragraphs 1 through 24, 26, 30 and 34 are realleged and incorporated herein by reference.

38. Upon information and belief, Dominick's failed at relevant times to maintain and, as applicable, provide to EPA, information, records or reports: (a) detailing the date and type of service as well as the amount of refrigerant added to commercial refrigeration equipment as required by 40 C.F.R. § 82.166(k); and (b) specifying the leak rate of equipment, the method used to determine the leak rate, the date that a greater than allowable leak rate was discovered, the location and extent of leaks, and the date and type of repair work that was completed as required by 40 C.F.R. § 166(n);

39. Dominick's failed to comply with the record-keeping and reporting requirements described in the preceding paragraph at some or all of the 29-Facilities.

40. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166, at the 29-Facilities, Dominick's is liable for civil penalties of not more than \$27,500 per day, per violation.

41. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief should be entered requiring, among other things, that Dominick's comply with the recordkeeping and reporting requirements for one or more commercial refrigeration systems at each of the 29-Facilities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, prays that the Court:

A. Assess civil penalties against Dominick's of not more than \$27,500 per day for each violation or failure to comply with the Subpart F Regulations or the Clean Air Act;

- B. Enter an affirmative injunction requiring Dominick's to comply with Section 608 of the Act and the Subpart F regulations at each of the 29-Facilities, including, when required by the Subpart F regulations, to retrofit or retire one or more commercial process refrigeration units;
- C. The United States be awarded its costs and expenses incurred in this action; and
- D. Grant the United States such other and further relief as this Court deems appropriate.

Respectfully submitted,

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